



October 17, 2006
Folder: 02399-72

U. S. DEPARTMENT OF ENERGY
BUD SOKOLOVICH
2597 B $\frac{3}{4}$ ROAD
GRAND JUCTION, CO 91503

RE: Proposed construction, maintenance and use of non-exclusive private road encroachment access at or near Mile Post 28.3-28.5, Cane Creek Branch, Moab, Grand County, Utah

Attached are duplicate originals of a Right of Entry Agreement covering your use of the Railroad Company's right-of-way. To properly document your use of the Railroad Company's property, it is necessary that you execute the attached documents. Please return to me in the enclosed envelope the following:

1. **ALL** of the executed documents (2). If a Contractor's Endorsement is attached hereto, you may submit the executed Contractor's Endorsement upon selection of a contractor. \$500 administrative fee and current certificate of insurance is required for each Contractor.
2. Certificate of Insurance.
3. Check, with Folder No. 02399-72 written on the front, administrative fee made payable to the Union Pacific Railroad Company in the amount of Two Thousand Five Hundred Dollars (\$2,500).

If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Service's policy regarding Form 1099, I certify that 94-6001323 is the Railroad Company's Federal Taxpayer Identification Number and that UNION PACIFIC RAILROAD COMPANY is doing business as a corporation.

If we have not received the executed documents within 30 days from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8574.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Tanya Spratt", written over a horizontal line.

Tanya Spratt
Manager - Real Estate

Real Estate

UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1690
Omaha, Nebraska 68179-1690
fx. (402) 501-0340

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of _____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad" or "Licensor"); and the **UNITED STATES DEPARTMENT OF ENERGY**, 2597 B ¾ Road, Grand Junction, CO 81503, hereinafter the "Licensee" or "Government").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE 1 - DEFINITION OF LICENSEE

For purposes of this agreement, all references in this agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE; LIMITATIONS

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property located at or near Milepost 28.3-28.5, NEAR Moab, Utah on Licensor's Cane Creek Branch for the purpose of performing work relating to construct/grade/rehabilitate an access road, and to remove and dispose of a crane at the location shown on **Exhibit A**, attached hereto and made a part hereof (the "Work"), at the sole cost and expense of Licensee. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

THE RIGHTS HEREIN GRANTED TO LICENSEE ARE STRICTLY LIMITED TO THE WORK DESCRIBED ABOVE. ANY ADDITIONAL USE OF LICENSOR'S PROPERTY OR ADJACENT PROPERTY CONTEMPLATED BY LICENSEE SHALL BE SUBJECT TO ENTERING INTO A LEASE AND A TRACK AGREEMENT WITH LICENSOR, ON LICENSOR'S STANDARD FORMS .

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND B-1

The terms and conditions contained in **Exhibit B** and **Exhibit B-1**, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee, or any costs or expenses incurred by the Railroad relating to this agreement. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to Railroad's Manager – Track Maintenance, Bobby Cordova or his authorized representative (hereinafter the "Railroad Representative").

ARTICLE 5 - TERM; TERMINATION

- a). The grant of right herein made to Licensee shall commence on the date of this agreement, and continue until September 1, 2007, unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.
- b). Railroad may terminate this agreement if it reasonably determines in good faith that Licensee has failed to comply with any of the material terms and conditions of this agreement and has not cured such failure within ten (10) days after receiving notice (oral or written) from Railroad describing such failure in reasonable detail.

ARTICLE 6 - CERTIFICATE OF INSURANCE

In the event any of the Work to be done upon the property of the Railroad is to be done by a contractor or subcontractor of Government, said contractor or subcontractor may have the benefit of the license herein granted, while performing work for the Government, provided they agree to be subject to and bound by the terms and conditions of this agreement by: (1) executing an endorsement to this agreement in the form set forth in Contractor's Endorsement, attached hereto, and (2) provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this Agreement, in a policy or policies which contains the following type of endorsement:

Union Pacific Railroad Company is named as additional insured with respect to all liabilities arising out of Insured's, as Contractor, performance of any work on the property of the Railroad.

- a.) All insurance correspondence, binders or originals shall be directed to:

Folder No. 2399-72
Union Pacific Railroad Company
Attn: Tanya Spratt
1400 Douglas Street STOP 1690
Omaha, Nebraska 68179-1690

- b.) The parties acknowledge that the Government is self-insured, and will manage any liabilities arising out of this Agreement under its risk management programs.
- c.) Any indemnity provisions in this Agreement are to be construed as applicable to Government's contractors only.

ARTICLE 7 - CHOICE OF FORUM

This agreement shall be governed, construed and enforced in accordance with the laws of the state of Utah and the United States of America. Venue for any dispute arising under this agreement shall be in the United States District Court for the District of Utah or such other Court as provided by law.

ARTICLE 8 - REMOVAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE

At the request of Railroad, Licensee shall remove from Railroad property any contractor, subcontractor, officer, agent and/or employee of Licensee who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Licensee shall be suspended until such removal has occurred. Licensee shall indemnify Railroad against any claims arising from the removal of any such contractor, subcontractor, officer, agent and/or employee from Railroad property.

ARTICLE 9 - SPECIAL PROVISIONS

- a.) No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Licensee without the prior written permission of Railroad.
- b.) Explosives or other highly flammable substances shall not be stored on Railroad property without the prior written approval of the Railroad Representative.

ARTICLE 10 – PREVIOUS AGREEMENT

The parties intend that this agreement is supplemental to Right-of-Way Grant: U-058188, dated April 24, 1962, and is not intended to supersede the original agreement. This agreement is not intended to alter or revoke any rights or responsibilities of the Government or UPRR under the original agreement. The parties to this agreement have made every effort possible to not put provisions in this agreement that conflict with provisions of the original agreement. However, in the event any provision of this agreement is determined to conflict with any term of the original agreement, the terms of the original agreement will control.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of the date first herein written.

UNITED STATES DEPARTMENT OF ENERGY

By: _____

Title: _____

UNION PACIFIC RAILROAD COMPANY

By: _____

Mark B. Stevenson

Director – Real Estate Department

CONTRACTOR'S ENDORSEMENT

A. As a condition to entering upon Railroad's right-of-way to perform Work pursuant to this agreement, Licensee's contractor, _____ whose address is _____ (hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of this agreement relating to the Work to be performed and the insurance requirements set forth in Exhibit B-1.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in paragraph (d) of Exhibit B-1, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this Agreement in a policy or policies which contains the following type endorsement:

UNION PACIFIC RAILROAD COMPANY is named as additional insured with respect to all liabilities arising out of Insured's performance of Work on behalf of the Licensee.

C. All insurance correspondence, binders or originals shall be directed to:

Folder No. 2399-72
Union Pacific Railroad Company
Real Estate Department
Attn: Tanya Spratt
1400 Douglas Street STOP 1580
Omaha, Nebraska 68179-1580

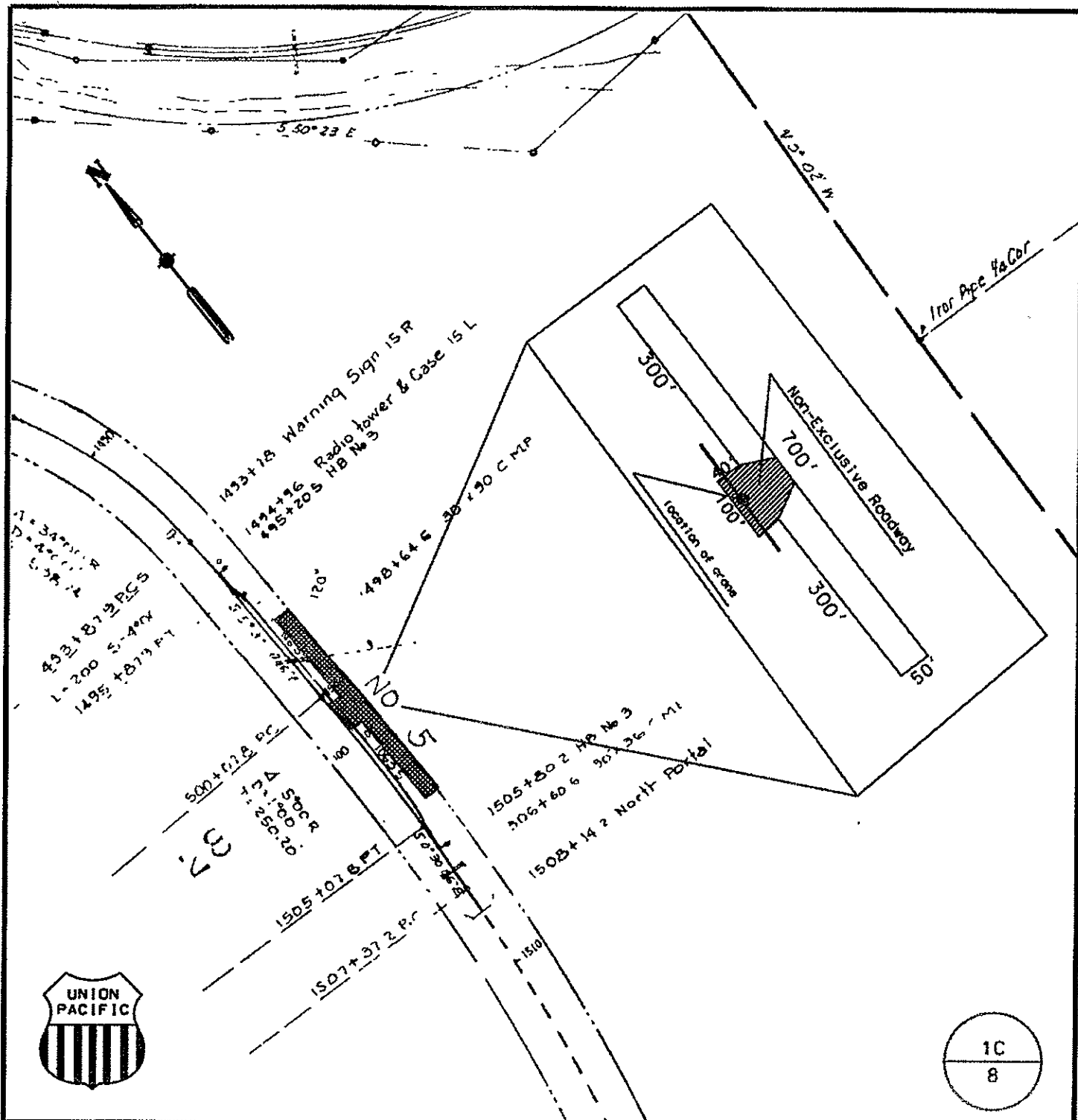
D. Please note that fiber optic cable may be buried on Railroad's property. **Prior to commencing any work, Contractor agrees to contact Railroad's Telecommunications Operation Center at 1-800-336-9193 to determine if any fiber optic cable is located on Railroad's property on or near the location where the work is to be performed.** If there is, Contractor must comply with the terms and conditions of Section 5 of Exhibit B before commencing any work on Railroad's property.

E. **Contractor agrees to also contact Railroad's Manager-Track Maintenance, Bobby Cordova, 970-248-4254,** at least 48 hours prior to working on Railroad's property in order for Railroad to coordinate the Contractor's work with Railroad's operations and to make arrangements for flagging protection (if applicable).

CONTRACTOR (print name on above line)

By: _____
(sign on above line)

Title: _____



LEGEND:

EASEMENT AREA SHOWN



UPRRCO. R/W OUTLINED



NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

Moab, Grand County, Utah

M.P. 28.3- 28.5 - Cane Creek Branch

TO ACCOMPANY AGREEMENT WITH
U. S. Department of Energy

SCALE: 1" = 400'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: August 31, 2006

JCD FILE: 2399-72

X

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EXHIBIT B
TO
RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

a. The Licensee agrees to notify the Railroad Representative at least 10 working days in advance of Licensee commencing its work and at least 10 working days in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 10-day notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein. Licensee shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefor.

b. The rate of pay per hour for each person will be the prevailing hourly rate in effect for an eight hour day for the class of persons used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Empl. Liability & Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

c. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for

which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Licensee must provide the Railroad a minimum of 5-days notice prior to the cessation of the need for a flagman. If 5-days notice of cessation is not given, the Licensee will still be required to pay flagging charges for the 5-day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional 10-days-notice must then be given to the Railroad if flagging services are needed again after such 5-day cessation notice has been given Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be reasonably done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH RAILROAD'S OPERATION.

No work performed by Licensee shall cause any unreasonable interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

Section 4. MECHANIC'S LIENS.

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. The Licensee shall indemnify and hold harmless the Railroad

from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

a. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and shall commence no work on the right of way until all such protection or relocation has been accomplished.

b. In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that proximately causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this agreement, the Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof

being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 7. SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the Work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

- a. The Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.

- b. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment:
 - (1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's, contractor's or subcontractor's company logo or name.

 - (2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and

 - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its contractor's or subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 8. INDEMNITY.

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee, to the extent allowable at law, agrees to indemnify and hold harmless the Railroad from any Loss which is proximately caused in whole or in part by the work performed under this agreement, a breach of the agreement or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this agreement regardless of whether contributed to in part by the negligence or fault of Railroad. However, the Licensee shall not indemnify the Railroad when the Loss is caused by the sole negligence of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings resulting from any employee's suit against either party pursuant to any such Act(s) be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 9. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. The Licensee shall remove all of Licensee's tools, equipment and materials from Railroad's property

promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Licensee entered thereon.

Section 10. WAIVER OF BREACH.

Waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 11. ASSIGNMENT - SUBCONTRACTING.

Except as otherwise provided herein, the Licensee shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of contractors and subcontractors, and all work of contractors and subcontractors shall be governed by the terms of this agreement.

Exhibit B-1
Union Pacific Railroad
Contract Insurance Requirements

Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. Umbrella or Excess insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed..

I. Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and

employers liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

RIGHT OF ENTRY AGREEMENT

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IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE 1 - DEFINITION OF LICENSEE

For purposes of this agreement, all references in this agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE; LIMITATIONS

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property located at or near Milepost 28.3-28.5, NEAR Moab, Utah on Licensor's Cane Creek Branch for the purpose of performing work relating to construct/grade/rehabilitate an access road, and to remove and dispose of a crane at the location shown on **Exhibit A**, attached hereto and made a part hereof (the "Work"), at the sole cost and expense of Licensee. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

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ARTICLE 5 - TERM; TERMINATION

- a). The grant of right herein made to Licensee shall commence on the date of this agreement, and continue until September 1, 2007, unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.
- b). Railroad may terminate this agreement if it reasonably determines in good faith that Licensee has failed to comply with any of the material terms and conditions of this agreement and has not cured such failure within ten (10) days after receiving notice (oral or written) from Railroad describing such failure in reasonable detail.

ARTICLE 6 - CERTIFICATE OF INSURANCE

In the event any of the Work to be done upon the property of the Railroad is to be done by a contractor or subcontractor of Government, said contractor or subcontractor may have the benefit of the license herein granted, while performing work for the Government, provided they agree to be subject to and bound by the terms and conditions of this agreement by: (1) executing an endorsement to this agreement in the form set forth in Contractor's Endorsement, attached hereto, and (2) provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this Agreement, in a policy or policies which contains the following type of endorsement:

Union Pacific Railroad Company is named as additional insured with respect to all liabilities arising out of Insured's, as Contractor, performance of any work on the property of the Railroad.

- a.) All insurance correspondence, binders or originals shall be directed to:

Folder No. 2399-72
 Union Pacific Railroad Company
 Attn: Tanya Spratt
 1400 Douglas Street STOP 1690
 Omaha, Nebraska 68179-1690

- b.) The parties acknowledge that the Government is self-insured, and will manage any liabilities arising out of this Agreement under its risk management programs.
- c.) Any indemnity provisions in this Agreement are to be construed as applicable to Government's contractors only.

ARTICLE 7 - CHOICE OF FORUM

This agreement shall be governed, construed and enforced in accordance with the laws of the state of Utah and the United States of America. Venue for any dispute arising under this agreement shall be in the United States District Court for the District of Utah or such other Court as provided by law.

ARTICLE 8 - REMOVAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE

At the request of Railroad, Licensee shall remove from Railroad property any contractor, subcontractor, officer, agent and/or employee of Licensee who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Licensee shall be suspended until such removal has occurred. Licensee shall indemnify Railroad against any claims arising from the removal of any such contractor, subcontractor, officer, agent and/or employee from Railroad property.

ARTICLE 9 - SPECIAL PROVISIONS

- a.) No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Licensee without the prior written permission of Railroad.
- b.) Explosives or other highly flammable substances shall not be stored on Railroad property without the prior written approval of the Railroad Representative.

ARTICLE 10 - PREVIOUS AGREEMENT

The parties intend that this agreement is supplemental to Right-of-Way Grant: U-058188, dated April 24, 1962, and is not intended to supersede the original agreement. This agreement is not intended to alter or revoke any rights or responsibilities of the Government or UPRR under the original agreement. The parties to this agreement have made every effort possible to not put provisions in this agreement that conflict with provisions of the original agreement. However, in the event any provision of this agreement is determined to conflict with any term of the original agreement, the terms of the original agreement will control.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of the date first herein written.

UNITED STATES DEPARTMENT OF ENERGY

By: _____

Title: _____

UNION PACIFIC RAILROAD COMPANY

By: _____

Mark B. Stevenson

Director – Real Estate Department

CONTRACTOR'S ENDORSEMENT

A. As a condition to entering upon Railroad's right-of-way to perform Work pursuant to this agreement, Licensee's contractor, _____ whose address is _____ (hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of this agreement relating to the Work to be performed and the insurance requirements set forth in Exhibit B-1.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in paragraph (d) of Exhibit B-1, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this Agreement in a policy or policies which contains the following type endorsement:

UNION PACIFIC RAILROAD COMPANY is named as additional insured with respect to all liabilities arising out of Insured's performance of Work on behalf of the Licensee.

C. All insurance correspondence, binders or originals shall be directed to:

Folder No. 2399-72
Union Pacific Railroad Company
Real Estate Department
Attn: Tanya Spratt
1400 Douglas Street STOP 1580
Omaha, Nebraska 68179-1580

D. Please note that fiber optic cable may be buried on Railroad's property. **Prior to commencing any work, Contractor agrees to contact Railroad's Telecommunications Operation Center at 1-800-336-9193 to determine if any fiber optic cable is located on Railroad's property on or near the location where the work is to be performed.** If there is, Contractor must comply with the terms and conditions of Section 5 of Exhibit B before commencing any work on Railroad's property.

E. **Contractor agrees to also contact Railroad's Manager-Track Maintenance, Bobby Cordova, 970-248-4254,** at least 48 hours prior to working on Railroad's property in order for Railroad to coordinate the Contractor's work with Railroad's operations and to make arrangements for flagging protection (if applicable).

CONTRACTOR (print name on above line)

By: _____
(sign on above line)

Title: _____

EXHIBIT B
TO
RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

a. The Licensee agrees to notify the Railroad Representative at least 10 working days in advance of Licensee commencing its work and at least 10 working days in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 10-day notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein. Licensee shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefor.

b. The rate of pay per hour for each person will be the prevailing hourly rate in effect for an eight hour day for the class of persons used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Empl. Liability & Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

c. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for

which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Licensee must provide the Railroad a minimum of 5-days notice prior to the cessation of the need for a flagman. If 5-days notice of cessation is not given, the Licensee will still be required to pay flagging charges for the 5-day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional 10-days-notice must then be given to the Railroad if flagging services are needed again after such 5-day cessation notice has been given Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be reasonably done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH RAILROAD'S OPERATION.

No work performed by Licensee shall cause any unreasonable interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

Section 4. MECHANIC'S LIENS.

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. The Licensee shall indemnify and hold harmless the Railroad

from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

a. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and shall commence no work on the right of way until all such protection or relocation has been accomplished.

b. In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that proximately causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this agreement, the Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof

being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 7. SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the Work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

- a. The Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.
- b. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment:
 - (1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's, contractor's or subcontractor's company logo or name.
 - (2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
 - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its contractor's or subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 8. INDEMNITY.

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee, to the extent allowable at law, agrees to indemnify and hold harmless the Railroad from any Loss which is proximately caused in whole or in part by the work performed under this agreement, a breach of the agreement or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this agreement regardless of whether contributed to in part by the negligence or fault of Railroad. However, the Licensee shall not indemnify the Railroad when the Loss is caused by the sole negligence of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings resulting from any employee's suit against either party pursuant to any such Act(s) be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 9. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. The Licensee shall remove all of Licensee's tools, equipment and materials from Railroad's property

promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Licensee entered thereon.

Section 10. WAIVER OF BREACH.

Waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 11. ASSIGNMENT - SUBCONTRACTING.

Except as otherwise provided herein, the Licensee shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of contractors and subcontractors, and all work of contractors and subcontractors shall be governed by the terms of this agreement.

Exhibit B-1
Union Pacific Railroad
Contract Insurance Requirements

Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. Umbrella or Excess insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed..

I. Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and

employers liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.